IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5500 of 1999
With
SPECIAL CIVIL APPLICATION NO.8787 OF 1999

HONOURABLE MR.JUSTICE KS JHAVERI

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JUNAGADH AMRELI GRAMIN BANK - Petitioner(s)
Versus
RASIKKUMAR DHIRAJLAL JANI & 1 - Respondent(s)

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Appearance :
MR AS VAKIL for Petitioner(s) : 1,
MS SEJAL K MANDAVIA for Respondent(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 22/09/2005

CAV JUDGMENT

1.0 In both the above matters the facts and questions of law involved are identical and therefore they are decided by a common judgement.

2.0 In both the petitions the petitioner is Junagadh Amreli Gramin Bank and both the petitions are against the the awards passed by the Labour Court in Reference (LCJ) No.45/99 dated 5.5.1999 and in Reference (LCJ) No.74/95

dated 31.7.1999 whereby the Labour Court directed the petitioner to reinstate the concerned respondent workman in service on his original post with continuity of service along with full back wages.

3.0 The short facts of the case are that the petitioner bank opened a branch in village Nanadia some time in the year 1986 with only one employee i.e. Manager. Both the respondents workmen were engaged for limited work of clearing and filling up water in the drinking pot. According to the petitioner there was no written formal order by which the respondent workmen were engaged by the petitioner bank. The petitioner alleged that th respondent workmen voluntarily and willingly stopped attending the work from 1987 onwards.

3.1 The respondents raised a dispute which was referred to the Labour Court, Junagadh for adjudication. The Labour Court, after hearing the parties passed the awards directing the petitioner to reinstate the concerned respondent workman in service on his original post with continuity of service along with full back wages. The said awards are challenged in the present petition.

4.0 Learned counsel for the petitioner submitted that the Labour Court failed to appreciate that there was a delay in raising the dispute before the

appropriate Government. According to him there was no explanation for the delay caused in filing the reference. He submitted that on that ground alone the reference ought to have been dismissed.

4.1 Learned counsel submitted that the concerned workmen are not “workman” as defined under section 2(2) of the I.D. Act. Therefore the provisions of sections 2(oo), 10(1), 25F and 25B are not applicable to the facts of the present case. He submitted that the respondents were on daily wage basis and therefore there was no question of retrenchment. According to the learned counsel, the respondent workmen worked with the bank with break and therefore there was no requirement of complying with section 25F of the Act. Mr. Vakil submitted that the Labour Court has erred in concluding that the respondent no.1 was a workman within the definition of Section 2(s) of the I.D. Act.

4.2 Mr. Vakil has relied upon a decision in the case of in the case of Shalimar Works Ltd. Vs. Its workmen reported in 1955 II LLJ 395 wherein it is held that the reference made after four years after the re-employment of most of the old workmen must be held to have been made beyond a reasonable time and the industrial tribunal ought not to grant the relief of reinstatement on such a reference.

4.3 Mr. Vakil has next relied upon a decision in the case of Bombay Union of Journalists and others Vs. The state of Bombay and another, reported in AIR 1964 SC 1617, wherein it is held that if the claim made is patently frivolous, or is clearly belated the appropriate Government may refuse to make a reference.

4.4 Mr. Vakil has pointed out a decision of the Bombay High Court, in the case of R. Ganeshan Vs. Union of India, reported in 1993 LAB I.C. 802, wherein it is held that inordinate delay was a just and proper ground for refusing to make a reference.

4.5 He has next relied upon a decision in the case of Hassam Noor Mohmed Vs. State of Gujarat, reported in 1996(2) GLH 149 wherein it is held that delay and latches is a relevant consideration and therefore refusal to refer the dispute upheld.

4.6 Mr. Vakil has also relied upon a decision in the case of Management of M/s Indian Iron & Steel Co. Ltd. Vs. Prahlad Singh, reported in AIR 2001 SC 69 wherein it is held that the relief was rightly refused as stale claim in view of the delay of 13 years.

5.0 Learned counsel for the respondent submitted that the Labour Court

has considered all the facts and circumstances of the case and the Labour Court has given cogent and convincing reasons for passing the awards in so far as granting reinstatement with continuity of service.

6.0 As a result of hearing and perusal of the record, I am of the view that the Labour Court had discussed all the aspects of the matter. From the evidence on record the Labour Court found that the workman was doing work whole day as peon of the petitioner bank. It is also on record in the form of a certificate that the respondent workman had performed duty as daily wager in the petitioner bank from 12.2.1986 to 9.11.1986 continuously and from 15.11.1986 to 17.11.1987 upto every three months with a break of one week in between and the total days of his duty comes to 470 days. In any case, the clear finding of the Labour Court is that the concerned workman has worked more than 240 days constantly in a years. Learned counsel for the petitioner is unable to controvert this position in any manner whatsoever.

6.2 According to the finding recorded by the Labour Court, the petitioner has not proved that the respondent workmen abandoned the job. The respondent workmen clearly stated in their statement that the petitioner the bank had given an assurance to keep them in service. On the facts of the case the it is the finding of the Labour Court that the petitioner has committed violation of provisions of section 25-F of the Act.

6.3 In the written statement the petitioner had raised a dispute that the petitioner bank does not fall within the definition of “industry”, but thereafter the petitioner has not raised the said plea. Even then the Labour Court recorded a finding that in view of the decision in the case of Cooperative Land Development Bank , reported in AIR 1970 SC 245, wherein it is held that cooperative bank would within the purview of definition of”Industry”.

6.4 From the record, I find that the plea of the respondent workmen was that the officer of the petitioner Bank had given assurance that as and when there is necessity of work, they would call the workmen. Therefore, they waited, but they were not called for work at all. This contention was not controverted by the bank by any evidence. I am therefore of the opinion that delay cannot be attributed to the respondent if they were told that as and when work would be available they would be informed accordingly.

6.5 In this regard it would be profitable to look into certain decisions of the Apex Court. In the case of Ajaib Singh Vs. Sirhind Cooperative marketing-cum-processing service society Limited, reported in (1999) 6 SCC 82 wherein it is held that even in case of proved delay, relief can be moulded by declining whole or part of back wages.

6.6 In the case of Mahavir Singh Vs. U.P. State Electricity Board and others, reported in (1999)9 SCC 178 wherein the Court held that High Court erred in holding that due to delay in raising the industrial dispute, the entire reference was incompetent. In the case of Shahaji Vs. Executive Engineer, PWD, reported in 2005(5) Scale 261, it is held that even if there was delay in making a reference to the Labour Court, if it came to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay.

7.0. In the present case reference had already been allowed by the Labour Court. Labour Court considered the matter on merits and found that the termination was illegal. Therefore, in view of the aforesaid facts and circumstances of the case, it cannot be said that the award granting reinstatement is illegal or bad in law.

8.0 However, I am of the opinion that the Labour Court was not justified in granting full back wages to the concerned workman. No reasons are assigned by the Labour Court for award of full back wages. It is evident that the Labour Court has granted back wages without application of mind. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic

entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> “10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle “no work no 'ay” as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid

to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

8.1 In any case, in view of the delay in raising the dispute and in view of the decisions in the case of Ajaib Singh and other decisions discussed hereinabove, the Labour Court ought to have moulded the relief by declining grant of backwages. On the facts of the case I am of the opinion that in view of the settled law the Labour Court was not justified in granting full back wages.

9.0 In the premises aforesaid, the award qua back wages is quashed and set aside. The rest of the award is confirmed. Rule is made absolute to the aforesaid extent accordingly in both the petitions with no order as to costs.

[K.S. JHAVERI, J.]

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